

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

CRYSTALLEX INTERNATIONAL CORP.,

Plaintiff,

v.

BOLIVARIAN REPUBLIC OF VENEZUELA,

Defendant.

Case No. 1:17-mc-00151-LPS

**DECLARATION OF STEPHEN C. CHILDS, ESQ. IN SUPPORT OF
ANSWERING BRIEF OF THE BOLIVARIAN REPUBLIC OF VENEZUELA,
PETRÓLEOS DE VENEZUELA, S.A., AND PDV HOLDING, INC.
REGARDING POTENTIAL FUTURE PROCEDURES**

I, Stephen C. Childs, declare as follows:

1. I am an attorney admitted to the Bar of the State of Delaware and this Court and an attorney in the law firm of Abrams & Bayliss LLP. I represent Defendant Bolivarian Republic of Venezuela (“Republic”) in the above-captioned action and have personal knowledge of the facts set forth below.

2. I submit this declaration in support of Answering Brief of The Bolivarian Republic of Venezuela and Petróleos De Venezuela, S.A., and PDV Holding, Inc. Regarding Potential Future Procedures.

3. Attached as Exhibit 1 to this declaration is a true and correct copy of the May 4, 2019 Stay Extension Motion Record, *In re Crystallex Int’l Corp.*, No. CV-11-9532-00CL (Can. Ont. S.C. May 4, 2019). Crystallex International Corporation (“Crystallex”) moved for an order approving the Thirteenth Credit Agreement Amendment to the Debtor-In-Possession (“DIP”)

Loan Agreement. Ex. 1 at 9.¹ Crystallex's Notice of Motion and the Thirteenth Credit Agreement Amendment are included in this exhibit. *Id.* at 8–13, 42–49. The Thirteenth Credit Agreement indicates that the latest assignee of the DIP Loan is Tenor Special Situation I, L.P. (“Tenor Special”). *Id.* at 42.

4. Attached as Exhibit 2 to this declaration are true and correct copy of Tenor Opportunity Fund, L.P. SEC Form D, Notice of Exempt Offering of Securities, dated March 14, 2019, and Tenor Capital Management Company, L.P. Part 2A of SEC Form ADV, dated March 30, 2020. Tenor Special is controlled by the same individuals who control Tenor Capital Management Company, L.P. (“Tenor Capital”). Tenor Special's general partner is Tenor Opportunity Associates, L.L.C. Ex. 1 at 49. Tenor Opportunity Associates, L.L.C.'s managing member is Robin Shah. Ex. 2 at 2. Shah is a principal of Tenor Capital. *Id.* at 10.

5. Attached as Exhibit 3 to this declaration is a true and correct copy of the Senior Secured Credit Agreement between Crystallex International Corporation and Tenor Special Situation Fund I, L.L.C., dated April 23, 2012. Exhibit 3 is the original DIP loan agreement between Crystallex and Tenor Special Situation Fund I, L.L.C. Ex. 3 at 7. Tenor Special Situation Fund I, L.L.C. is a different entity than the current DIP lender, though Tenor Special Situation Fund I, L.L.C. is also controlled by Tenor Capital. *Id.* at 65. Crystallex was issued a \$36 million loan at a 10% interest rate in exchange for a first priority lien on 35% of any recovery against the Republic. *Id.* at 7–8, 77.

6. Attached as Exhibit 4 to this declaration is a true and correct copy of the April 16, 2012, June 5, 2013, and April 14, 2014 CCAA Financing Orders, *In re Crystallex Int'l Corp.*, No. CV-11-9532-00CL (Can. Ont. S.C. April 16, 2012 – April 14, 2014). In the April 16, 2012 CCAA

¹ For ease of reference, all exhibit page numbers refer to the .PDF pagination.

Financing Order, the Ontario Superior Court approved the Senior Secured Credit Agreement (Ex. 3) between Crystallex and Tenor Special Situation Fund I, L.L.C. Ex. 4 at 2–13. In the June 5, 2013 Additional CCAA Financing Order, the Court approved an amendment to the Senior Secured Credit Agreement (Ex. 3) in which Crystallex was issued an additional \$11.1 million loan in exchange for a first priority lien on an additional 14.874% of any recovery against the Republic. *Id.* at 17. In the April 14, 2014 Second Additional CCAA Financing Order, the Court approved another amendment in which Crystallex was issued an additional \$12.1 million loan and a \$3.3 million loan in exchange for a first priority lien on an additional 16.214% and 4.466%, respectively, of any recovery against the Republic.

I declare under penalty of perjury under the law of the United States of America that the foregoing is true and correct.

Executed this 7th day of July, 2020, in Wilmington, Delaware.

/s/ Stephen C. Childs

Stephen C. Childs, Esq.